

IN THE CIRCUIT COURT OF TENNESSEE
FOR THE TWENTY-FIFTH JUDICIAL DISTRICT
HARDEMAN COUNTY AT BOLIVAR

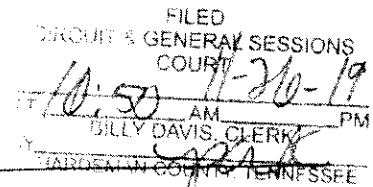
AFFORDABLE CONSTRUCTION SERVICES, INC.

Plaintiff,
v.

Docket No. 2018-CV-48
NOTICE OF ENTRY
REQUESTED

GRAND VALLEY LAKES PROPERTY OWNERS
ASSOCIATION, INC. and OWNERS INSURANCE
COMPANY,

Defendants.



ORDER GRANTING GRAND VALLEY LAKES PROPERTY
OWNERS ASSOCIATION, INC.'S MOTION TO DISMISS

This cause came to be heard on the 1st day of November, 2019 before the Honorable J. Weber McCraw upon the *Defendant Grand Valley Lakes Property Owners Association, Inc.'s Motion to Dismiss* and a review of the entire file. No opposition was filed to the Motion by the Plaintiff Affordable Construction Services, Inc. Likewise, no one appeared on behalf of Affordable Construction Services, Inc. Consequently, the *Defendant Grand Valley Lakes Property Owners Association, Inc.'s Motion to Dismiss* is hereby **GRANTED** for the reasons set forth in its Motion.

In summary, a *Complaint* was filed on December 28, 2018 alleging in part causes of action for breach of contract and breach of implied covenant of good faith and fair dealings by the Defendant Grand Valley Lakes Property Owners Association Inc. In addition, Owner's Insurance Company was named as a Defendant for allegedly breaching T.C.A. § 56-7-111. No *Answer*, or *Appearance* has been filed on behalf of Owner's Insurance Company.

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STATE OF TENNESSEE HARDEMAN COUNTY
I, Billy Davis, Clerk of the Circuit and General
Sessions Court certify that the foregoing is a true & correct
copy of order of dismissal as appears of
record in my office. Witness my hand and seal this 23
day of April 2020
Circuit & General Sessions Clerk, Hardeman County, TN

Generally, the *Complaint* alleged that the Defendant, GVLPOA owns facilities in Hardeman County, Tennessee that includes various buildings. On December 23, 2015, a severe windstorm caused damages to the various structures. The insurance company, Owners Insurance Company denied the claim of the GVLPOA.

The Plaintiff alleges that following the damage the GVLPOA, through the apparent authority of its President, Myra Cox entered into a contractual relationship with the Plaintiff whereby GVLPOA assigned its benefits under its insurance policy to Plaintiff and GVLPOA gave Plaintiff the right to act and accepting the claims made by it against the insurer. The *Complaint* alleges that the insurer, rejected the claim. Eventually, GVLPOA sue the insurer and a settlement was reached in November 2017.

In ruling on a Motion to Dismiss pursuant to T.R.C.P. 12.2(6), the Court must determine whether the pleading states a claim under which relief may be granted. A Rule 12.02(6) motion tests "only the legal sufficiency of the complaint, not the strength of the Plaintiff's proof or evidence." *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn 2011). The Court should grant the Motion to Dismiss only if it appears that the Plaintiff cannot establish any facts in support of the claim that would warrant relief. *Doe v. Sundquest*, 2 S.W.3d 919, 922 (Tenn. 1999).

The Court, adopts all of the arguments, and legal authority cited by *Grand Valley Lakes Property Owners Association's Motion to Dismiss* as they clearly, comply with the above stated standards of review. Most pertinent is the fact that the GVLPOA is not a party to the contract as attached as Exhibit A.¹ GVLPOA, does not appear in Exhibit A

¹ It should be noted that Exhibit A, was not attached to the Complaint as filed. Only after a Motion filed by GVLPOA on May 6, 2019 granted by this Court by Order entered on

as a party allegedly contracted with the Plaintiff. Instead the name "Myra Cox" is stated in the blank following "NAME". Likewise, there is no signature on behalf of GVLPOA in the signature block, only "Myra Cox". There is no document or allegation showing GVLPOA ratified or approved Exhibit A. As stated, in 3 C.J.S. Agency § 410 (1973), "[a] principal is bound neither by contracts made by a person not his agent, nor by those of his agent beyond the scope of his actual and apparent authority, which he has not ratified and is not estopped to deny." See also *Bagley & Co. v. Union-Buffalo Mills Co.*, 9 Tenn. App. 63, 67,-68 (1928).

The balance of the arguments of the Defendant Grand Valley Lakes Property Owners Association, Inc's Motion to Dismiss are well taken, and incorporated herein by reference. Thus, for the above reasons, the Defendant Grand Valley Lakes Property Owners Association, Inc's Motion to Dismiss is hereby granted and the *Complaint* dismissed with prejudice as to it.

Pursuant to T.R.C.P. 54.02, the Court makes the following additional findings:

1. The claim against GVLPOA is contained only in Paragraphs 3 through 19 of the Complaint;
2. The granting of this Motion, disposes, of all of those claims;
3. Any claims, against this Defendant GVLPOA are not pertinent to the remaining claims against the remaining Defendant, Owners Insurance Company;

Pursuant to T.R.C.P. 54.02, this Court directs the entry of a Final Judgment as to all of the claims against the Defendant, GVLPOA as there is no just reason for delay as the Court has disposed of all the claims and none of the remaining claims relate to the


June 24, 2019 and subsequently filed on September 21, 2019 was Exhibit A placed into the record.

claim against the Defendant, GVLPOA. Consequently, there is no just reason for delay and this Order is the entry of a Final Judgment.

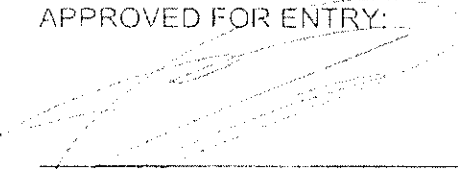
IT IS THEREFORD ORDERED, ADJUDGED AND DECREED THAT:

The Motion of Defendant Grand Valley Lakes Owners Association, Inc. is hereby **GRANTED** and this constitutes a Final Judgment as to GVLPOA. This dismissal is with prejudice. All costs are taxed to the Plaintiff, Affordable Construction Services, Inc. for which execution may issue.

ENTERED this the 20th day of November, 2019.


HONORABLE WEBER J. MCGRAW

APPROVED FOR ENTRY:



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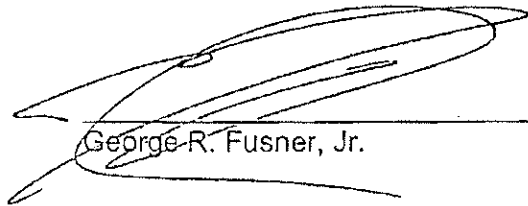
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Email: rcharlton@winchesterlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this *Order Granting Grand Valley Lakes Owners Association, Inc's Motion to Dismiss* has been mailed, first class, postage prepaid to:

Mr. Randy Songstad
254 Court Avenue, Ste. 213
Memphis, TN 38103

- ☒ U.S. Mail, postage prepaid,
- ☐ Fed Ex
- ☐ Hand-Delivery
- ☐ Facsimile to () -
- ☐ E-Mail to _____@_____.com
- ☐ U.S. Certified Mail (RRR)



George R. Fusner, Jr.